

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the San Francisco Bay Area Rapid Transit for an order authorizing construction of an elevated structure crossing above the BART tracks and the tracks of the Union Pacific Oakland Subdivision and Niles Subdivision.

Application 03-12-017
(Filed December 9, 2003)

DECISION MODIFYING AUTHORITY GRANTED TO THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT IN DECISION 04-04-061**Summary**

This decision grants the San Francisco Bay Area Rapid Transit District authority to modify the design that was authorized by the Commission in Decision 04-04-061, dated April 22, 2004, in Application 03-12-017. The design was modified from three grade-separated track-over-track crossings to one grade-separated track-over-track crossing, above Union Pacific Railroad's Niles Subdivision tracks located at milepost 12.08, and one grade-separated pedestrian pathway crossing of the Bay Area Rapid Transit District tracks located at milepost 5.50. These crossings will be identified as CPUC Crossing No. 001D-12.08-AT and 080A-5.50-AD, respectively.

Procedural History

The Bay Area Rapid Transit District's (BART) Oakland Airport Connector (OAC) project connects BART's Oakland Coliseum Station to the Oakland Airport via an elevated Automated Guideway Transit System. Decision (D.) 04-

04-061, dated April 22, 2004, approved the scope of this project which included three grade-separated rail track-over-track crossings.

Due to significant and unexpected project funding cuts, the project was not completed within three years as intended and BART requested two time extensions of D.04-04-061. The first time extension was granted via Resolution TED- 229, dated May 22, 2007, which expired on May 22, 2010. The second time extension was granted via TED 242, dated May 12, 2010, which expired on May 22, 2013. The second time extension request explained that the project would be moving forward as a design-build contract, and BART intended to award the contract later that year. The request also stated that no changes had occurred to the proposed rail crossing design since the time of the original application. After BART awarded the contract and granted a notice-to-proceed to its contractor in November 2010, the contractor proposed design changes to the crossings. Due to an oversight by the project personnel, BART did not immediately notify California Public Utilities Commission (CPUC) of the design changes.

On May 31, 2013, BART personnel realized that the second time extension granted in TED - 242 had expired as of May 22, 2013. BART personnel contacted CPUC staff for advice in order to be compliant with the CPUC requirements. Given that there had been changes to the originally approved crossings design, CPUC staff advised BART personnel to submit a Petition for Modification (PFM).

Discussion

BART is planning to operate approximately 396 trains per day on the OAC tracks. The trains will be running at 28 miles per hour through the grade-

separated crossing. The PFM requests authorization to modify the original design authorized in D.04-04-061, dated April 22, 2004, as follows:

- 1) OAC line alignment will be changed at its connection to the Oakland Coliseum Station, shifting the grade-separated crossing of Union Pacific Railroad (UPRR) Niles Subdivision tracks (CPUC Crossing No. 001D-12.08-AT) by approximately 40 feet from original designed location.
- 2) The OAC line will be shortened shifting OAC Oakland Coliseum Station and resulting in elimination of the grade-separated crossing of UPRR Oakland Subdivision tracks (CPUC Crossing No.004-12.10-AT).
- 3) Stopping the OAC line short of the BART Oakland Coliseum Station and guiding the passengers to the OAC Oakland Coliseum Station, and vice versa, by a pedestrian-only grade-separated pathway crossing over BART tracks, thereby eliminating the previously authorized grade-separated track-over-track crossing in favor of a pedestrian-only pathway grade-separated crossing (CPUC Crossing No. 080A-5.50-AD).

Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources Code Section 21000, et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities. Since the project is subject to CEQA and the Commission must issue a discretionary decision in order for the project to proceed (i.e., the Commission has the exclusive authority to approve the project pursuant to Section 1202 of the Public Utilities Code), the Commission must consider the environmental consequences of the project by acting as either a lead or responsible agency under CEQA.

The lead agency is either the public agency that carries out the project,¹ or the one with the greatest responsibility for supervising or approving the project as a whole.² Here, BART is the lead agency for this project because the project is being constructed by BART, and is subject to its review and approval, and the Commission is a responsible agency because it has jurisdiction to issue a permit for the project. As a responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting on or approving this project.³ As a responsible agency, the Commission must make findings regarding each significant effect of the project components under its jurisdiction; such findings shall include relevant mitigation measures.⁴ On March 28, 2002, the BART Board of Directors certified the Final Environmental Impact Report/ Final Environmental Impact Statement (FEIR/FEIS) for the entire project. This document was used to grant BART authorization to construct the crossings.

On March 28, 2002, BART certified the FEIR/FEIS for the entire project.

In November 2006, the BART Board of Directors released a DRAFT FEIR/FEIS Addendum to accommodate for the modifications that have taken place with the new design. The changes described in the addendum do not include any significant impacts to the environment with respect to the crossings.

¹ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

² CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

³ CEQA Guidelines, Sections 15050(b) and 15096.

⁴ CEQA Guidelines, Section 15096(h).

The Federal Transit Administration (FTA) reviewed this Addendum pursuant to requirements of the National Environmental Policy Act (NEPA) and in a letter dated March 20, 2007, found no new substantial impacts, new information, or new circumstances caused by the proposed design changes concurring that a Supplemental Environmental Impact Statement is not required.

The Commission reviewed and considered the FEIR/FEIS and the 2006 FEIR/FEIS Addendum and finds them adequate for our decision-making purposes.

Filing Requirements and Staff Recommendations

This application is in compliance with the Commission's filing requirements including Rule 3.7 of the Rules of Practice and Procedure, which relates to the construction of a public road across a railroad.

The Commission's Safety and Enforcement Division, Office of Rail Safety - Rail Crossings Engineering Section has inspected the site of the proposed crossings, reviewed and analyzed the plans submitted with the application, and recommends that the requested authority to modify D. 04-04-061 from three track-over-track crossings to one track-over-track crossing and one grade-separated pedestrian pathway crossing be granted for a period of one year.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Denise Tyrrell is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the Petition for Modification was published in the Commission's Daily Calendar on December 16, 2013. There are no unresolved matters or protests. A public hearing is not necessary.

2. BART requests the authorization to modify the original design that was authorized in the D.04-04-061, dated April 22, 2004, as follows:

- a) OAC line alignment will be changed, shifting the grade-separated crossing of UPRR Niles Subdivision tracks (CPUC Crossing No. 001D-12.08-AT) by approximately 40 feet from original designed location.
- b) The OAC line will be shortened at its connection to the Oakland Coliseum Station, resulting in the elimination of the grade-separated crossing of UPRR Oakland Subdivision tracks (previously proposed as CPUC Crossing No. 004-12.10-AT).
- c) Shortening the OAC line at the BART Oakland Coliseum Station and guiding the patrons between the existing BART system and the BART OAC by a pedestrian-only grade-separated pathway crossing over BART tracks, essentially converting the previously authorized grade-separated track-over-track crossing into a pedestrian-only grade-separated crossing (proposed CPUC Crossing No. 080A-5.50-AD).

3. BART is the lead agency for this project under CEQA.

4. On March 28 2002, BART certified the FEIR/FEIS for the entire project.

5. In November of 2006, the BART Board of Directors released a DRAFT FEIR/FEIS Addendum to accommodate for the modifications that have taken place with the new design.

6. The changes described in the Addendum do not include any significant impacts to the environment with respect to the crossings.

7. The FTA reviewed this Addendum and in a letter dated March 20, 2007, found no new substantial impacts, new information, or new circumstances caused by the proposed design changes concurring that a Supplemental Environmental Impact Statement is not required.

8. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's FEIR/FEIS and the 2006 FEIR/FEIS Addendum.

9. The FEIR/FEIS and the 2006 FEIR/FEIS Addendum reflect the Commission's independent judgment and analysis.

Conclusions of Law

1. The FEIR/FEIS and the 2006 FEIR/FEIS Addendum prepared by BART as the documentation required by CEQA and NEPA for the project are adequate for our decision-making purposes. The project will not have a significant immitigable effect on the environment.

2. The FEIR/FEIS and the 2006 FEIR/FEIS Addendum were completed in compliance with CEQA and NEPA.

3. The application is uncontested and a public hearing is not necessary.

4. The application should be granted as set forth in the following order.

O R D E R

IT IS ORDERED that:

1. Bay Area Rapid Transit District is authorized to modify the original design that was authorized in Decision 04-04-061, dated April 22, 2004, by eliminating one track-over-track crossing, re-aligning one track-over-track

crossing, and converting one track-over-track crossing into a pedestrian pathway only grade-separated crossing.

2. The modifications outlined in the Petition for Modification shall be as follows:

- a) Constructing one track-over-track grade-separated crossing with Oakland Airport Connector Bay Area Rapid Transit tracks going above Union Pacific Railroad's Niles Subdivision tracks located at milepost 12.08. This crossing shall be identified as CPUC Crossing No. 001D-12.08-AT.
- b) Constructing one grade-separated pedestrian pathway crossing at the station over the Bay Area Rapid Transit District tracks located at milepost 5.50. This crossing shall be identified as CPUC Crossing No. 080A-5.50-AD.
- c) The previously designed crossing of Oakland Airport Connector tracks over Union Pacific's Oakland Subdivision tracks shall no longer be constructed, CPUC Crossing No. 004-12.10-AT.

3. The Bay Area Rapid Transit District shall notify the California Public Utilities Commission's Safety and Enforcement Division, Office of Rail Safety - Rail Crossings Engineering Section at least five (5) business days prior to opening the grade-separated track-over-track and pedestrian pathway crossings.

Notification should be made to rces@cpuc.ca.gov.

4. Within 30 days after completion of the work under this Order, the Bay Area Rapid Transit District shall notify the California Public Utilities Commission's Safety and Enforcement Division, Office of Rail Safety - Rail Crossings Engineering Section in writing, by submitting a completed Commission Standard Form G (*Report of Changes at Highway Grade Crossings and Separations*), of the completion of the authorized work. Form G requirements

and forms can be obtained at the California Public Utilities Commission web site Form G page at:

<http://www.cpuc.ca.gov/PUC/safety/Rail/Crossings/formg> . This report may be submitted electronically to rces@cpuc.ca.gov as outlined on the web page.

5. Within 30 days after completion of the work under this Order, the Bay Area Rapid Transit District shall notify the Federal Railroad Administration of the existence of the track-over-track crossing by submitting a U.S.DOT CROSSING INVENTORY FORM, form FRA F6180.71. Concurrently, Bay Area Rapid Transit District shall provide a copy of the inventory form to the California Public Utilities Commission's Safety and Enforcement Division, Office of Rail Safety - Rail Crossings Engineering Section. This copy of the form may be submitted electronically to rces@cpuc.ca.gov .
6. The Bay Area Rapid Transit District shall comply with all applicable rules, including California Public Utilities Commission General Orders and the California Manual on Uniform Traffic Control Devices.
7. This authorization shall expire if not exercised within one year, unless time is extended or if the above conditions are not satisfied. The California Public Utilities Commission may revoke or modify this authorization if public convenience, necessity, or safety so require.
8. A request for extension of the one-year authorization period must be submitted to the California Public Utilities Commission's Safety and Enforcement Division, Office of Rail Safety - Rail Crossings Engineering Section at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.
9. The application is granted as set forth above.

10. Application 03-12-017 is closed.

This order is effective today.

Dated _____, at San Francisco, California.